

SENATE NO. 1066

AN ACT RELATIVE TO WORKER'S COMPENSATION

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Section 25C of Chapter 152 of the General Laws, as appearing in the 2004 Official
2 Edition, is hereby amended by adding at the end the following:—

3 (11) Private Right of Action to Recover Workers Compensation Coverage Payments. Where either the
4 Massachusetts attorney general or a superior court decides that probable cause exists to show that an
5 employer has not fully complied with this chapter, then any 10 persons may bring on behalf, and in the
6 name, of the Workers Compensation Trust Fund established by this chapter at Section 65 a civil action
7 to recover amounts which by law should have been paid by the employer pursuant to this chapter to
8 cover the employer's employees who engaged in employment in Massachusetts. Such persons may
9 petition in writing that the attorney general or a court hold a probable cause hearing to make a decision
10 as to whether such probable cause exists, and shall serve a copy of the petition to the employer named
11 within five days. The attorney general or the court in which such a petition was filed shall hold a
12 hearing within 30 days, and after the conclusion of said hearing, shall render a decision within 30
13 additional days. The decision may be appealed when a cause of action filed under this section has been
14 finally adjudicated, unless the petition is denied. At the hearing, it shall be prima facie evidence that
15 such probable cause exists if it is shown that:

- 16 i) An employee was paid any portion of wages in cash currency with no deductions or taxes withheld;
17 ii) No accompanying pay slip or check showing the wage payment and withholdings or deductions as
18 required in GL c. 149, Section 148 was provided;
19 iii) An individual was misclassified as an independent contractor where the individual was in fact an
20 employee;
21 iv) Wages were not timely paid;
22 v) The employer failed to withhold from the employee's wages all related state taxes; or
23 vi) Employees have not been properly reported on GL 149, §27B certified payroll records.

24 Nothing contained above, however, shall be construed as limiting or prohibiting in any way
25 whatsoever other information that might be used to establish the requisite probable cause that this
26 chapter was not fully complied with, and any information produced need not be admissible at a trial.
27 At the probable cause hearing, it is not grounds for objecting that the information produced will be
28 inadmissible in a trial if the information appears reasonably sufficient that it might lead to the
29 discovery of other information that could be admissible at a trial.

30 After the decision that such probable cause exists has been made, the persons who brought the petition
31 shall serve a copy of the decision on any insurer that was or is entitled to collect amounts not paid and
32 the persons shall simultaneously state any intention to file suit under this section. At least 90 days after
33 such service, the persons may file a civil action in accord with this section. Any persons who prevail in
34 an action filed pursuant to this section shall be entitled to recover 25 percent of the amounts
35 unlawfully not paid or \$25,000, whichever is less, plus costs and reasonable attorneys fees, as well as
36 an additional amount from the defendant(s) as liquidated damages equal to 25 percent of the amount
37 not paid or \$25,000, whichever is less. Such liquidated damages are not intended to be penal or
38 punitive, but compensatory. After an action under this section is filed in a court, any insurer that failed

39 to file a complaint or seek arbitration to recover or collect all the amounts which would have been due
40 to the insurer from a defendant in such action shall be prohibited from attempting to recover or collect
41 any amounts sought in the action which the insurer failed to seek to recover or collect, unless the
42 insurer obtains the written and voluntary consent of the persons who have initiated the suit under this
43 section. When such written consent is provided, a court may substitute the insurer as the plaintiff.
44 When the insurer is substituted as the plaintiff, then the case shall proceed without further regard to
45 this section or the Workers' Compensation Trust Fund.

46 No settlement made between any insured and any insurer shall be deemed to prohibit or limit an action
47 under this section to recover other amounts that should have been paid to cover employees under this
48 chapter and which the insurer did not recover by such settlement or otherwise.

49 Except as provided herein and unless the insurer has been substituted in the action, any amounts
50 recovered by the persons who filed the civil action under this section shall be deposited into the
51 Workers' Compensation Trust Fund established pursuant to section 65 of this chapter, except those
52 amounts payable to such persons in accord with this section.

53 Any insurer, however, who pays any claim may recover from the amounts that are deposited into the
54 Trust Fund any premium that should have been paid to that insurer which would have provided
55 coverage for that specific claimant and claim.

56 Nothing contained herein shall be deemed as limiting or prohibiting in any way whatsoever any
57 political subdivision, public entity or office, for example, any division, commission, commissioner,
58 director, attorney general, and any law enforcement entity or office, presently entitled to bring any
59 action, criminal or civil, against a defendant(s) to an action under this section from proceeding against
60 such defendant in any appropriate forum. The forum, court, or agency, however, may consider and
61 offset the amounts recovered, or likely recoverable, by an action pursuant to this section in imposing a

62 verdict or judgment, or against imposing a fine or other penalty.

63 The section shall not affect, or apply to, insurance contracts that were made before the date this section
64 becomes law. In addition to what is contained above, any action filed under this section may be filed
65 only after 90 days following the expiration of the then present term of the workers compensation
66 policy effected by the action, if one existed.